

Introduced by Senator Padilla

February 18, 2011

An act to amend Section 11713.3 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 642, as introduced, Padilla. Vehicles: manufacturers and distributors.

Existing law generally requires a manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in specified activity. Violation of this law is crime.

This bill would provide that it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch, directly or indirectly through an affiliate, to engage in this specified activity.

Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve a person from liability, among other things.

This bill would delete this prohibition and instead would prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from obtaining or enforcing, or attempting to obtain or enforce, against a dealer an agreement that, among other things, modifies or disclaims any duty or obligation of a manufacturer, manufacturer branch, distributor, distributor branch, or representative, among other things. The bill would also provide that such an agreement would be unenforceable.

Existing law prohibits a manufacturer, manufacturer branch, distributor, or distributor branch from competing with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area, with exceptions in limited circumstances, including those circumstances where the manufacturer or distributor owns or operates a dealership for a temporary period, not to exceed one year.

This bill would specify that the above exception applies only at the location of a former dealership of the same line-make that has been out of operation for less than 6 months.

Existing law requires a manufacturer, branch, and distributor branch that owns or operates a dealership for a temporary period, to give written notice to the New Motor Vehicle Board each time it acquires or divests itself of an ownership interest.

This bill would also require a manufacturer, branch, and distributor branch to provide the notice each time it changes an ownership interest.

Existing law requires a manufacturer, branch, and distributor that owns an interest in a dealer, as part of a bona fide dealer development program, to give written notice to the board, annually of the name and location of each dealer in which it has an ownership interest.

This bill would also require the manufacturer, branch, and distributor to give notice regarding the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

Existing law prohibits a manufacturer, manufacturer branch, distributor, or distributor branch from unfairly discriminating in favor of any dealership owned or controlled, in whole or in part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Existing law describes unfair discrimination as, among other things, the furnishing to any franchisee or dealer that is owned or controlled, in whole or part, by a manufacturer, branch, or distributor of certain things, including furnishing a vehicle that is not made available to each franchisee, as provided.

This bill would also include furnishing sales or service incentives, among other things, that are not made available to all California franchisees on an equivalent basis, as unfair discrimination.

This bill would also prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from unfairly discriminating against a franchisee selling a service contract or debt cancellation agreement, among other things, as provided. The bill would describe unfair

discrimination as express or implied statements that the dealer is under an obligation to exclusively sell or offer to sell service contracts, among other things. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The distribution, sale, and service of new motor vehicles in
4 this state vitally affects the state's general economy and the public
5 welfare.

6 (b) The new motor vehicle franchise system, which operates
7 within a strictly defined and highly regulated statutory scheme,
8 assures consumers of a well-organized distribution system for the
9 availability and sale of new motor vehicles throughout the state;
10 provides a network of quality warranty and repair facilities to
11 maintain those vehicles; and creates a cost-effective method for
12 the state to police those systems through the licensing and
13 regulation of private sector franchisors and franchisees.

14 (c) It is the intent of the Legislature, in acting this act to prohibit
15 franchisors from avoiding state franchise protection laws, to ensure
16 fair competition among new motor vehicle dealer franchisees that
17 are independently owned and those owned by their franchisors,
18 and to clarify that the existing prohibition against franchisor
19 ownership of a dealership located within a 10-mile radius of a
20 nonfranchisor-owned dealership of the same line-make is subject
21 only to certain limited exceptions that may not be used to justify
22 any improper purpose, including the operation of a dealership by
23 a sophisticated investor or operator posing as a dealer development
24 candidate.

25 SEC. 2. Section 11713.3 of the Vehicle Code is amended to
26 read:

1 11713.3. It is unlawful and a violation of this code for ~~any a~~
2 manufacturer, manufacturer branch, distributor, or distributor
3 branch licensed ~~under pursuant to~~ this code to do, *directly or*
4 *indirectly through an affiliate*, any of the following:

5 (a) To refuse or fail to deliver in reasonable quantities and within
6 a reasonable time after receipt of an order from a dealer having a
7 franchise for the retail sale of ~~any a~~ new vehicle sold or distributed
8 by the manufacturer or distributor, ~~any a~~ new vehicle or parts or
9 accessories to new vehicles as are covered by the franchise, if the
10 vehicle, parts, or accessories are publicly advertised as being
11 available for delivery or actually being delivered. This subdivision
12 is not violated, however, if the failure is caused by acts or causes
13 beyond the control of the manufacturer, manufacturer branch,
14 distributor, or distributor branch.

15 (b) To prevent or require, or attempt to prevent or require, by
16 contract or otherwise, ~~any a~~ change in the capital structure of a
17 dealership or the means by or through which the dealer finances
18 the operation of the dealership, if the dealer at all times meets ~~any~~
19 reasonable capital standards agreed to by the dealer and the
20 manufacturer or distributor, and if a change in capital structure
21 does not cause a change in the principal management or have the
22 effect of a sale of the franchise without the consent of the
23 manufacturer or distributor.

24 (c) To prevent or require, or attempt to prevent or require, a
25 dealer to change the executive management of a dealership, other
26 than the principal dealership operator or operators, if the franchise
27 was granted to the dealer in reliance upon the personal
28 qualifications of that person.

29 (d) (1) Except as provided in subdivision (t), to prevent or
30 require, or attempt to prevent or require, by contract or otherwise,
31 ~~any a~~ dealer, or ~~any an~~ officer, partner, or stockholder of ~~any a~~
32 dealership, the sale or transfer of ~~any a~~ part of the interest of any
33 of them to ~~any other another~~ person. ~~No~~ A dealer, officer, partner,
34 or stockholder shall *not*, however, have the right to sell, transfer,
35 or assign the franchise, or ~~any a~~ right thereunder, without the
36 consent of the manufacturer or distributor except that the consent
37 shall not be unreasonably withheld.

38 (2) (A) For the transferring franchisee to fail, prior to the sale,
39 transfer, or assignment of a franchisee or the sale, assignment, or
40 transfer of all, or substantially all, of the assets of the franchised

1 business or a controlling interest in the franchised business to
2 another person, to notify the manufacturer or distributor of the
3 franchisee's decision to sell, transfer, or assign the franchise. The
4 notice shall be in writing and shall include all of the following:

5 (i) The proposed transferee's name and address.

6 (ii) A copy of all of the agreements relating to the sale,
7 assignment, or transfer of the franchised business or its assets.

8 (iii) The proposed transferee's application for approval to
9 become the successor franchisee. The application shall include
10 forms and related information generally utilized by the
11 manufacturer or distributor in reviewing prospective franchisees,
12 if those forms are readily made available to existing franchisees.
13 As soon as practicable after receipt of the proposed transferee's
14 application, the manufacturer or distributor shall notify the
15 franchisee and the proposed transferee of ~~any~~ information needed
16 to make the application complete.

17 (B) For the manufacturer or distributor, to fail, on or before 60
18 days after the receipt of all of the information required pursuant
19 to subparagraph (A), or as extended by a written agreement
20 between the manufacturer or distributor and the franchisee, to
21 notify the franchisee of the approval or the disapproval of the sale,
22 transfer, or assignment of the franchise. The notice shall be in
23 writing and shall be personally served or sent by certified mail,
24 return receipt requested, or by guaranteed overnight delivery
25 service that provides verification of delivery and shall be directed
26 to the franchisee. ~~Any~~ A proposed sale, assignment, or transfer
27 shall be deemed approved, unless disapproved by the franchisor
28 in the manner provided by this subdivision. If the proposed sale,
29 assignment, or transfer is disapproved, the franchisor shall include
30 in the notice of disapproval a statement setting forth the reasons
31 for the disapproval.

32 (3) ~~In any~~ *an* action in which the manufacturer's or distributor's
33 withholding of consent under this subdivision or subdivision (e)
34 is an issue, whether the withholding of consent was unreasonable
35 is a question of fact requiring consideration of all the existing
36 circumstances.

37 (e) To prevent, or attempt to prevent, a dealer from receiving
38 fair and reasonable compensation for the value of the franchised
39 business. There shall *not* be ~~no~~ a transfer or assignment of the
40 dealer's franchise without the consent of the manufacturer or

1 distributor, which consent shall not be unreasonably withheld or
2 conditioned upon the release, assignment, novation, waiver,
3 estoppel, or modification of ~~any~~ a claim or defense by the dealer.

4 (f) To obtain money, goods, services, or ~~any other~~ another
5 benefit from ~~any other~~ a person with whom the dealer does
6 business, on account of, or in relation to, the transaction between
7 the dealer and that other person, other than for compensation for
8 services rendered, unless the benefit is promptly accounted for,
9 and transmitted to, the dealer.

10 ~~(g) To require a dealer to prospectively assent to a release,~~
11 ~~assignment, novation, waiver, or estoppel that would relieve any~~
12 ~~person from liability to be imposed by this article or to require any~~
13 ~~controversy between a dealer and a manufacturer, distributor, or~~
14 ~~representative, to be referred to any person other than the board,~~
15 ~~if the referral would be binding on the dealer. This subdivision~~
16 ~~does not, however, prohibit arbitration before an independent~~
17 ~~arbitrator.~~

18 (g) (1) *To obtain or attempt to obtain from a dealer or enforce*
19 *or attempt to enforce against a dealer an agreement, provision,*
20 *release, assignment, novation, waiver, or estoppel that does any*
21 *of the following:*

22 (A) *Modifies or disclaims a duty or obligation of a manufacturer,*
23 *manufacturer branch, distributor, distributor branch, or*
24 *representative, or a right or privilege of a dealer, pursuant to*
25 *Chapter 4 (commencing with Section 11700) of Division 5 or*
26 *Chapter 6 (commencing with Section 3000) of Division 2.*

27 (B) *Limits or constrains the right of a dealer to file, pursue, or*
28 *submit evidence in connection with a protest before the board.*

29 (C) *Provides for the termination of a franchise by a dealer.*

30 (D) *Requires a controversy between a manufacturer,*
31 *manufacturer branch, distributor, distributor branch, or*
32 *representative and a dealer to be referred to a person for a binding*
33 *determination.*

34 (2) *An agreement, provision, release, assignment, novation,*
35 *waiver, or estoppel prohibited by this subdivision shall be*
36 *unenforceable and void whether entered into before or during the*
37 *term of a franchise. This subdivision shall not limit or restrict the*
38 *terms upon which parties to a protest before the board, civil action,*
39 *or other proceeding can settle or resolve the protest or other claim,*

1 *or stipulate to evidentiary or procedural matters during the course*
2 *of a protest, civil action, or other proceeding.*

3 (h) To increase prices of motor vehicles that the dealer had
4 ordered for private retail consumers prior to the dealer's receipt
5 of the written official price increase notification. A sales contract
6 signed by a private retail consumer is evidence of ~~each such~~ *the*
7 order. In the event of manufacturer price reductions, the amount
8 of the reduction received by a dealer shall be passed on to the
9 private retail consumer by the dealer if the retail price was
10 negotiated on the basis of the previous higher price to the dealer.
11 Price reductions apply to all vehicles in the dealer's inventory that
12 were subject to the price reduction. Price differences applicable
13 to new model or series motor vehicles at the time of the
14 introduction of new models or series shall not be considered a
15 price increase or price decrease. This subdivision does not apply
16 to price changes caused by either of the following:

17 (1) The addition to a motor vehicle of required or optional
18 equipment pursuant to state or federal law.

19 (2) Revaluation of the United States dollar in the case of a
20 foreign-make vehicle.

21 (i) To fail to pay to a dealer, within a reasonable time following
22 receipt of a valid claim by a dealer thereof, ~~any~~ *a* payment agreed
23 to be made by the manufacturer or distributor to the dealer by
24 reason of the fact that a new vehicle of a prior year model is in the
25 dealer's inventory at the time of introduction of new model
26 vehicles.

27 (j) To deny the widow or heirs designated by a deceased owner
28 of a dealership, the opportunity to participate in the ownership of
29 the dealership or successor dealership under a valid franchise for
30 a reasonable time after the death of the owner.

31 (k) To offer ~~any~~ refunds or other types of inducements to ~~any~~
32 *a* person for the purchase of new motor vehicles of a certain
33 line-make to be sold to the state or ~~any~~ *a* political subdivision
34 ~~thereof of the state~~ without making the same offer to all other
35 dealers in the same line-make within the relevant market area.

36 (l) To modify, replace, enter into, relocate, terminate or refuse
37 to renew a franchise in violation of Article 4 (commencing with
38 Section 3060) of Chapter 6 of Division 2.

1 (m) To employ a person as a representative who has not been
2 licensed pursuant to Article 3 (commencing with Section 11900)
3 of Chapter 4 of Division 5.

4 (n) To deny ~~any~~ *a* dealer the right of free association with ~~any~~
5 ~~other~~ *another* dealer for ~~any~~ *a* lawful purpose.

6 (o) (1) To compete with a dealer in the same line-make
7 operating under an agreement or franchise from a manufacturer
8 or distributor in the relevant market area.

9 (2) A manufacturer, branch, or distributor or ~~any~~ *an* entity that
10 controls or is controlled by, a manufacturer, branch, or distributor,
11 shall not, however, be deemed to be competing in the following
12 limited circumstances:

13 (A) Owning or operating a dealership for a temporary period,
14 not to exceed one year *at the location of a former dealership of*
15 *the same line-make that has been out of operation for less than six*
16 *months*. However, after a showing of good cause by a manufacturer,
17 branch, or distributor that it needs additional time to operate a
18 dealership in preparation for sale to a successor independent
19 franchisee, the board may extend the time period. ~~The board shall~~
20 ~~extend the time period until December 31, 2002, for any~~
21 ~~manufacturer that meets all of the following requirements:~~

22 (i) ~~The manufacturer has no more than 25 franchisees in the~~
23 ~~state and those franchisees collectively operate dealership facilities~~
24 ~~in at least 15 counties of the state.~~

25 (ii) ~~All of the dealership facilities operated by the manufacturer's~~
26 ~~franchisees in the state trade exclusively in the manufacturer's~~
27 ~~line-make.~~

28 (iii) ~~No fewer than one-half of the manufacturer's franchisees~~
29 ~~in the state own and operate two or more dealership facilities in~~
30 ~~their assigned areas of responsibility.~~

31 (iv) ~~The manufacturer holds a temporary ownership interest in~~
32 ~~no more than two dealerships in the state that are located in the~~
33 ~~relevant market area of any other franchisee of the same line-make~~
34 ~~not owned, in whole or part, by the manufacturer.~~

35 (B) Owning an interest in a dealer as part of a bona fide dealer
36 development program that satisfies all of the following
37 requirements:

38 (i) The sole purpose of the program is to make franchises
39 available to persons lacking capital, training, business experience,
40 or other qualities ordinarily required of prospective franchisees

1 and the dealer development candidate is an individual who is
2 unable to acquire the franchise without assistance of the program.

3 (ii) The dealer development candidate has made a significant
4 investment subject to loss in the franchised business of the dealer.

5 (iii) The program requires the dealer development candidate to
6 manage the day-to-day operations and business affairs of the dealer
7 and to acquire, within a reasonable time and on reasonable terms
8 and conditions, beneficial ownership and control of a majority
9 interest in the dealer and disassociation of any direct or indirect
10 ownership or control by the manufacturer, branch, or distributor.

11 (C) Owning a wholly owned subsidiary corporation of a
12 distributor that sells motor vehicles at retail, if, for at least three
13 years prior to January 1, 1973, the subsidiary corporation has been
14 a wholly owned subsidiary of the distributor and engaged in the
15 sale of vehicles at retail.

16 (3) (A) ~~Every~~A manufacturer, branch, and distributor that owns
17 or operates a dealership in the manner described in subparagraph
18 (A) of paragraph (2) shall give written notice to the board, within
19 10 days, each time it commences or terminates operation of a
20 dealership and each time it acquires, *changes*, or divests itself of
21 an ownership interest.

22 (B) ~~Every~~A manufacturer, branch, and distributor that owns an
23 interest in a dealer in the manner described in subparagraph (B)
24 of paragraph (2) shall give written notice to the board, annually,
25 of the name and location of each dealer in which it has an
26 ownership interest, *the name of the bona fide dealer development*
27 *owner or owners, and the ownership interests of each owner*
28 *expressed as a percentage*.

29 (p) To unfairly discriminate among its franchisees with respect
30 to warranty reimbursement or authority granted to its franchisees
31 to make warranty adjustments with retail customers.

32 (q) To sell vehicles to ~~persons~~ *a person* not licensed ~~under~~
33 *pursuant to* this chapter for resale.

34 (r) To fail to affix an identification number to ~~any~~ *a* park trailer,
35 as described in Section 18009.3 of the Health and Safety Code,
36 that is manufactured on or after January 1, 1987, and that does not
37 clearly identify the unit as a park trailer to the department. The
38 configuration of the identification number shall be approved by
39 the department.

(s) To dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This subdivision shall not prohibit the disallowance of that rebate or incentive if the purchaser or dealer is ineligible to receive the rebate or incentive pursuant to any other term or condition of a rebate or incentive program.

(t) To exercise a right of first refusal or ~~any other right requiring~~ a franchisee or ~~any an owner thereof of the franchise~~ to sell, transfer, or assign to the franchisor, or to ~~any a~~ nominee of the franchisor, all or ~~any a~~ material part of the franchised business or of the assets ~~thereof of the franchised business~~ unless all of the following requirements are met:

(1) The franchise authorizes the franchisor to exercise a right of first refusal to acquire the franchised business or assets ~~thereof of the franchised business~~ in the event of a proposed sale, transfer, or assignment.

(2) The franchisor gives written notice of its exercise of the right of first refusal no later than 45 days after the franchisor receives all of the information required pursuant to subparagraph (A) of paragraph (2) of subdivision (d).

(3) The sale, transfer, or assignment being proposed relates to not less than all or substantially all of the assets of the franchised business or to a controlling interest in the franchised business.

(4) The proposed transferee is neither a family member of an owner of the franchised business, nor a managerial employee of the franchisee owning 15 percent or more of the franchised business, nor a corporation, partnership, or other legal entity owned by the existing owners of the franchised business. For purposes of this paragraph, a “family member” means the spouse of an owner of the franchised business, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members. ~~Nothing contained in this~~ *This paragraph limits does not limit* the rights of the franchisor to disapprove a proposed transferee as provided in subdivision (d).

(5) Upon the franchisor’s exercise of the right of first refusal, the consideration paid by the franchisor to the franchisee and owners of the franchised business shall equal or exceed all consideration that each of them were to have received under the terms of, or in connection with, the proposed sale, assignment, or

1 transfer, and the franchisor shall comply with all the terms and
2 conditions of the agreement or agreements to sell, transfer, or
3 assign the franchised business.

4 (6) The franchisor shall reimburse the proposed transferee for
5 ~~any~~ expenses paid or incurred by the proposed transferee in
6 evaluating, investigating, and negotiating the proposed transfer to
7 the extent those expenses do not exceed the usual, customary, and
8 reasonable fees charged for similar work done in the area in which
9 the franchised business is located. These expenses include, but are
10 not limited to, legal and accounting expenses, and expenses
11 incurred for title reports and environmental or other investigations
12 of ~~any~~ real property on which the franchisee's operations are
13 conducted. The proposed transferee shall provide the franchisor a
14 written itemization of those expenses, and a copy of all
15 nonprivileged reports and studies for which expenses were incurred,
16 if any, within 30 days of the proposed transferee's receipt of a
17 written request from the franchisor for that accounting. The
18 franchisor shall make payment within 30 days of exercising the
19 right of first refusal.

20 (u) (1) To unfairly discriminate in favor of ~~any~~ a dealership
21 owned or controlled, in whole or part, by a manufacturer or
22 distributor or an entity that controls or is controlled by the
23 manufacturer or distributor. Unfair discrimination includes, but is
24 not limited to, the following:

25 (A) The furnishing to ~~any~~ a franchisee or dealer that is owned
26 or controlled, in whole or part, by a manufacturer, branch, or
27 distributor of any of the following:

28 (i) ~~Any~~ A vehicle that is not made available to each franchisee
29 pursuant to a reasonable allocation formula that is applied
30 uniformly, and ~~any~~ a part or accessory that is not made available
31 to all franchisees on an equal basis when there is no reasonable
32 allocation formula that is applied uniformly.

33 (ii) ~~Any~~ A vehicle, part, or accessory that is not made available
34 to each franchisee on comparable delivery terms, including the
35 time of delivery after the placement of an order. Differences in
36 delivery terms due to geographic distances or other factors beyond
37 the control of the manufacturer, branch, or distributor shall not
38 constitute unfair competition.

39 (iii) ~~Any information~~ Information obtained from a franchisee
40 by the manufacturer, branch, or distributor concerning the business

1 affairs or operations of ~~any~~ a franchisee in which the manufacturer,
2 branch, or distributor does not have an ownership interest. The
3 information includes, but is not limited to, information contained
4 in financial statements and operating reports, the name, address,
5 or other personal information or buying, leasing, or service
6 behavior of ~~any~~ a dealer customer, and ~~any~~ other information
7 ~~which~~ *that*, if provided to a franchisee or dealer owned or
8 controlled by a manufacturer or distributor, would give that
9 franchisee or dealer a competitive advantage. This clause does not
10 apply if the information is provided pursuant to a subpoena or
11 court order, or to aggregated information made available to all
12 franchisees.

13 (iv) *Sales or service incentives, discounts, or promotional*
14 *programs that are not made available to all California franchises*
15 *on an equivalent basis.*

16 (B) Referring a prospective purchaser or lessee to a dealer in
17 which a manufacturer, branch, or distributor has an ownership
18 interest, unless the prospective purchaser or lessee resides in the
19 area of responsibility assigned to that dealer or the prospective
20 purchaser or lessee requests to be referred to that dealer.

21 (2) ~~Nothing in this~~ *This subdivision shall be interpreted to does*
22 *not* prohibit a franchisor from granting a franchise to prospective
23 franchisees or assisting those franchisees during the course of the
24 franchise relationship as part of a program or programs to make
25 franchises available to persons lacking capital, training, business
26 experience, or other qualifications ordinarily required of
27 prospective franchisees.

28 (v) (1) To access, modify, or extract information from a
29 confidential dealer computer record, as defined in Section
30 11713.25, without obtaining the prior written consent of the dealer
31 and without maintaining administrative, technical, and physical
32 safeguards to protect the security, confidentiality, and integrity of
33 the information.

34 (2) Paragraph (1) does not limit a duty that a dealer may have
35 to safeguard the security and privacy of records maintained by the
36 dealer.

37 (w) (1) To use electronic, contractual, or other means to prevent
38 or interfere with any of the following:

39 (A) The lawful efforts of a dealer to comply with federal and
40 state data security and privacy laws.

1 (B) The ability of a dealer to do either of the following:

2 (i) Ensure that specific data accessed from the dealer's computer
3 system is within the scope of consent specified in subdivision (v).

4 (ii) Monitor specific data accessed from or written to the dealer's
5 computer system.

6 (2) Paragraph (1) does not limit a duty that a dealer may have
7 to safeguard the security and privacy of records maintained by the
8 dealer.

9 (x) *(1) To unfairly discriminate against a franchisee selling a*
10 *service contract, debt cancellation agreement, maintenance*
11 *agreement, or similar product not approved, endorsed, sponsored,*
12 *or offered by the manufacturer, manufacturer branch, distributor,*
13 *or distributor branch or affiliate. For purposes of this subdivision,*
14 *unfair discrimination includes, but is not limited to, any of the*
15 *following:*

16 (A) *Express or implied statements that the dealer is under an*
17 *obligation to exclusively sell or offer to sell service contracts, debt*
18 *cancellation agreements, or similar products approved, endorsed,*
19 *sponsored, or offered by the manufacturer, manufacturer branch,*
20 *distributor, or distributor branch or affiliate.*

21 (B) *Express or implied statements that selling or offering to sell*
22 *service contracts, debt cancellation agreements, maintenance*
23 *agreements, or similar products not approved, endorsed,*
24 *sponsored, or offered by the manufacturer, manufacturer branch,*
25 *distributor, or distributor branch or affiliate, or the failure to sell*
26 *or offer to sell service contracts, debt cancellation agreements,*
27 *maintenance agreements, or similar products approved, endorsed,*
28 *sponsored, or offered by the manufacturer, manufacturer branch,*
29 *distributor, or distributor branch or affiliate will have any negative*
30 *consequences for the dealer.*

31 (C) *Measuring a dealer's performance under a franchise*
32 *agreement based upon the sale of service contracts, debt*
33 *cancellation agreements, or similar products approved, endorsed,*
34 *sponsored, or offered by the manufacturer, manufacturer branch,*
35 *distributor, or distributor branch or affiliate.*

36 (D) *Requiring a dealer to actively promote the sale of service*
37 *contracts, debt cancellation agreements, or similar products*
38 *approved, endorsed, sponsored, or offered by the manufacturer,*
39 *manufacturer branch, distributor, or distributor branch or affiliate.*

1 (E) *Conditioning access to vehicles or parts, or vehicle sales*
2 *or service incentives upon the sale of service contracts, debt*
3 *cancellation agreements, or similar products approved, endorsed,*
4 *sponsored, or offered by the manufacturer, manufacturer branch,*
5 *distributor, or distributor branch or affiliate.*

6 (2) *Unfair discrimination does not include, and nothing shall*
7 *prohibit a manufacturer from, offering an incentive program to*
8 *vehicle dealers who voluntarily sell or offer to sell service*
9 *contracts, debt cancellation agreements, or similar products*
10 *approved, endorsed, sponsored, or offered by the manufacturer,*
11 *manufacturer branch, distributor, or distributor branch or affiliate,*
12 *if the program does not provide vehicle sales or service incentives.*

13 ~~(x)~~

14 (y) As used in this section, “area of responsibility” is a
15 geographic area specified in a franchise that is used by the
16 franchisor for the purpose of evaluating the franchisee’s
17 performance of its sales and service obligations.

18 SEC. 3. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.